IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I. T. APPEAL NO. 412 OF 2007
DECIDED ON : 17.12.2007

The Commissioner of Income Tax

...Appellant

versus

Smt. Sonal Bansal

...Respondent

Present: Mr. Yogesh Putney, Advocate,
for the appellant.

M. M. KUMAR, J.

This order shall dispose of I. T. Appeal Nos. 412, 413 and 414 of 2007 because similar issues are involved and the Income Tax Appellate Tribunal vide its order dated 25.01.2007 has disposed of all the three appeals by one composite order.

The appeals have been filed under Section 260-A of the Income Tax Act, 1961 (for brevity "the Act") challenging composite order dated 25.01.2007 passed by the Income Tax Appellate Tribunal, Delhi S.M.C Bench, New Delhi in I.T.A Nos. 4097, 99, 99 (Del.)/ 2006 in respect of the same assessment orders of 2002-03 concerning assessee-respondent Smt. Sonal Bansal, Smt.Ritu Bansal and Smt. Meenu Gupta (Annexure A-3). The revenue has claimed that following two substantial questions of law would emerge for determination of this Court :

"Whether on the facts and in the circumstances of the case, the ld. ITAT was right in law in upholding the order of the CIT (Appeals), directing the Assessing Officer to allow full credit of T.D.S to the assessee, in contravention of the provisions of section 199 of the Income Tax Act ?

Whether on the facts and in the circumstances of the case the findings recorded by ld. ITAT in allowing full credit of TDS to assessee are perverse and sustainable in view of statutory provisions of Section 199 of Income Tax Act, 1961 ?"

For the sake of convenience, facts are being referred from I.T.A No. 412 of 2007. There is one Vivek Bansal, Liberty House, Karnal who had originally purchased deep discount bonds 1997 of Industrial Development Bank of India (I.D.B.I) @ of Rs. 5500/- each (to be referred as the original purchaser). From him the assessee-respondent purchased those bonds @ Rs.9700/- each on 01.01.2001 for total value of Rs.19,40,000/- (to be referred as the assessee-secondary purchaser). The original purchaser filed his return for the assessment year 2001-02 and reflected the difference in amount of purchase viz.a.viz the sale. Thus, a sum of Rs. 9,40,000/- became long term capital gain in respect of the original assessee. It is undisputed that the bonds were

subject to accruing of interest year to year. Although, no income was received annually by the bond holder. The condition was modified by issuance of a press note later. The assessee-secondary purchaser received a draft of Rs. 19,08,200/-. The aforementioned amount has been accounted for by the assessee-secondary purchaser in the following manner :

IDBI Deep Discount Bonds 1997	Dr. to Bank
01.04.2001 Opening bal.19,40,000	D.D. On IDBI Bonds Redemption Amount 19,08,200
	T.D.S A/c
Interest A/c	TDS on IDBI interest
By Intt. On IDBI bonds 60,000	Rs.900000 91,800
2000000	2000000

The tax deduction certificate filed for gross interest of Rs.9,00,000/- was also duly accounted for. The assessee-secondary purchaser had duly filed her return on 26.06.2002 declaring her income of Rs.1,07,140/-. The Assessing Officer discovered at the time of processing of return on 31.03.2003 that the assessee had claimed credit of T.D.S of Rs.91,800/- in the return of income that was deducted by IDBI on the interest income of Rs.9,00,000/- which was paid by the bank to the assessee-secondary purchaser. In her return, the assessee-secondary purchaser had declared interest income at Rs. 60,000/- only. The Assessing Officer allowed her credit for T.D.S of Rs. 6120/-. Accordingly the credit as claimed by

the assessee-secondary purchaser to the tune of Rs.91,800/- at the interest income of Rs.9,00.000/- was not allowed by relying upon Section 199 of the Act. The assessee filed an application under Section 154 of the Act on 06.10.2003 with a request to the Assessing Officer to allow her full credit of T.D.S deducted by I.D.B.I which was rejected on 17.11.2003 placing reliance on Section 199 of the Act. The Assessing Officer followed the reasoning that the provision of Section 199 of the Act stipulates that credit of T.D.S was to be given to the assessee-secondary purchaser for the amount so deducted on furnishing of a Certificate under Section 203 of Act for the assessment year for which such income was assessable. On further appeal filed by the assessee, the CIT (A), Karnal accepted the contention of the assessee by placing reliance on circular No. 2 of 2002 issued by the Central Board of Direct Tax (to be referred as, "C.B.D.T). The CIT(A) concluded that the effect of circular No. 2 of 2002 issued by C.B.D.T was that the entire T.D.S benefit was to be given to the holder of the bond at the time of maturity and the assessee-secondary purchaser was entitled to the same. The CIT(A) disagreed with the approach adopted by the Assessing Officer that the T.D.S benefit was to be given whenever the income is declared because it was not a workable proposition as there can be a number of persons to whom the said credit may belong and that there can be different Assessing Officer of such persons. The CIT (A) held that the credit was not to

be available to other persons because the T.D.S certificate could not be issued in anyone else's name and that this was the intention and the meaning of the circular. It was further found that the assessee-secondary purchaser was required to declare interest income in respect of the period for which she had held the bond which has been correctly offered and there was no dispute on that question. The T.D.S certificate has also been correctly issued in the name of assessee-secondary purchaser as per the circular No. 2 of 2002 issued by C.B.D.T because she was the holder of the bond at the time of maturity. The only option was to give credit of T.D.S to the assessee-secondary purchaser. The CIT(A) holding that there was no other person to whom the credit should be given of any one portion of the T.D.S amount , the entire T.D.S credit was required to be given to the assessee-secondary purchaser only as per circular no. 2 of 2002. Accordingly, direction was issued by the CIT(A) to the Assessing Officer to allow credit to the assessee-secondary purchaser for the entire amount of T.D.S amounting to Rs. 91,800/-.

On further appeal filed by the revenue, the Tribunal upheld the order of the CIT(A). The Tribunal summed up the contents of circular no. 2 of 2002 dated 15.02.2002 by observing as under :

> "7. From the above circular, it is clear that :-
>
> 1. The application of Section 199 for T.D.S on deep discount bonds was giving rise to certain problems,

therefore, CBDT issued the above said circular for resolving such problems. Hence, the circular will be applicable to the cases of deep discount bonds.

II. The deep discount bonds can be transferred by the initial subscriber to other persons, called the intermediate holder/purchaser and intermediate holder can further transfer and such transfer can take place any number of times during the life time of the bond.

III. On transfer before maturity the transferor has to pay tax on the capital gain calculated on the basis of his cost of acquisition and the transfer price. The cost of acquisition is increased by the amount of interest/business income offered by such transfer during the period the bond was held by him and no T.D.S will be made or certificate issued to such transfer.

IV. The interest income of business income as the case may be, on account of accrual of interest can be offered for taxation for each assessment year separately and the tax can be paid but no T.D.S will be made every year.

V. T.D.S will be made at the time of the maturity of the bond only and it will be issued to the holder of the bond at the time of maturity."(emphasis added).

After understanding the circular in the aforementioned manner, the Tribunal held that the circular was applicable to the case of the assessee-secondary purchaser and that entire TDS benefit was required to be given to the holder of the bond at the time of maturity. Further view of the Tribunal is discernible from para 9 of the impugned order, which reads as under :

> "I have considered the rival submissions and the material available on record. Section 199 (1) provides, "Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government, shall be treated as payment of tax on behalf of the person from whose income the deduction was made or of the owner of the security or the depositor or owner of the property or of the unit holder or of the shareholder as the case may be and credit shall be given to him if the amount so deducted on the production of the certificate furnished under Section 203 in the assessment made under this act for assessment year for which such income is assessable. I find <u>that by Finance Act, 1996 with effect from 01.04.1997 the words "or depositor or owner of the property or of the unit holder" have been inserted in the existing provision of Section</u>

> 199 of the I.T.Act. In this case the Deep Discount Bonds were held by investor original purchaser, which were transferred during the intermediary period before the maturity. Therefore, problem arises as to how the same transaction is to be taxed. The CBDT circular No. 2 of 2002 clarified the above position and issued certain guidelines which are mentioned by the CIT(A) in his impugned order reproduced above. It is admitted fact that the original investor has shown his income as per CBDT circular in his return of income in which he did not claim any benefit of deduction of TDS. For the subsequent income, the assessee has shown the income for the purpose of taxation and claimed benefit of T.D.S because TDS certificate was issued in the name of the assessee being holder of the bond at the time of maturity. Therefore, as per CBDT circular above and Section 199, the assessee being owner and holder of the bond rightly claimed the TDS benefit in the matter."

We have heard Mr. Yogesh Putney, learned counsel for the revenue on both the questions at a considerable length. According to learned counsel, the view taken by CIT (A) as well as the Tribunal contravenes the provisions of

Section 199 of the Act. According to learned counsel any deduction made in accordance with the provisions of Chapter XVII and paid to the Central Government was required to be treated as tax on behalf of the person from whose income the deduction was made and interpretation of Section 199 of the Act in any other manner would result into injudicious results. He has also submitted that the interpretation of Section 199 of the Act as adopted by the Tribunal is unacceptable.

Learned counsel has emphasized that the Tribunal has proceeded on the wrong assumption that the original purchaser has shown his income in his return of income as per CBDT circular and that the original purchaser had not claimed any benefit of deductions of TDS. In support of his submissions, learned counsel has placed reliance on a judgment of Madras High Court in case of "**C.I.T V. Tanjore Permanent Bank LTD", (1984) 149 ITR 788**, and argued that the credit for tax deducted can be given only in case where the tax is paid on the income in respect of which deduction has been made at source and which is offered for assessment. The argument appears to be that an assessee in whose hands if any income is not taxed then it would not be entitled to get the credit of tax deducted at source, concerning such income. He has also placed reliance on the judgment of Calcutta High Court in the case of "**C.I.T V. Birla Janahit Trust", (1994) 208 I.T.R 372**.

We have carefully considered the submissions made by learned counsel and are of the view that the instant appeal lacks merit. In our view the Tribunal has correctly interpreted the provisions of Section 199 of the Act and circular No.2 of 2002. The provisions of Section 199 as amended on 01.04.1997 reads as under :

> "199. Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or depositor or owner of property or of unit-holder, or of the shareholder, as the case may be, and credit shall be given to him for the amount so deducted on the production of the certificate furnished under Section 203 in the assessment made under this Act for the assessment year for which such income is assessable."

A perusal of the aforementioned provision shows that any deduction made of tax at source and paid to the Central Government is required to be treated as payment of tax on behalf of the person from whose income the deduction was made. However, with effect from 01.04.1997 amendments were introduced by Finance Act, 1996 which

resulted into addition of words 'depositor' or 'owner of property' or 'owner of security' or 'unit holder' as the case may be. Therefore, it has to be accepted that any deduction made of tax at source and paid to the Central Government is required to be treated as payment of tax on behalf of 'owner of security' or 'unit holder'. In the present case, it is obviously the assessee-secondary purchaser who is owner of security and therefore, tax deducted at source has to be regarded as payment made on her behalf. Moreover, certificate under Section 203 of the Act has also been issued to assessee-secondary purchaser.

In our view, the Tribunal has rightly interpreted the words 'owner of the property' or 'of the unit-holder' to mean that the assessee-secondary purchaser was entitled to the benefit. The aforementioned situation has been made further clear by CBDT circular no. 2 of 2002 by issuing guidelines. One of the guidelines in the CBDT circular is that the TDS is to be made at the time of maturity of the bond and it was to be issued to the holder of the bond at the time of maturity. It is undisputed that the TDS certificate was issued in the name of the assessee being holder or owner of the bond at the time of maturity. Therefore, the case of the petitioner is covered by the virtue of expression or owner of the property or the unit holder which were added in Section 199 with effect from 01.04.1997. Therefore, we accept the view taken by the CIT (A) as well as the Tribunal as the correct

view and accordingly answer both the questions against the revenue.

We are also of the view that judgments of Madras High Court in the case of **Tanjore Permanent Bank Ltd** (supra) and **Birla Janahit Trust** (supra) would not be applicable to the facts of the present case as those judgments were in respect of earlier assessment years. The amendment made with effect from 01.04.1997 did not apply to those cases. Moreover, CBDT circular of 2002 was also not subject matter of consideration in those two judgments. Therefore, we do not deem it necessary to undertake in detail discussion about the aforementioned two judgments.

In view of the above, these appeals fail and the substantial questions of law raised by the revenue are answered against the revenue. The appeals are accordingly dismissed.

(M. M. KUMAR)
JUDGE

DECEMBER 17, 2007 **(RAKESH KUMAR JAIN)**
shalini **JUDGE**